

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW WASHINGTON
WASHINGTON, DC 20004-2401 NEW YORK
TEL 202.662.6000 SAN FRANCISCO
FAX 202.662.6291 LONDON
WWW.COV.COM BRUSSELS

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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Cable Providers and Sports Programming
MB Docket No. 07-42

Dear Ms. Dortch:

When it comes to the issue of sports tiers and sports programming, some cable providers have claimed that they treat all parties fairly and that their programming decisions are based solely on their desire to protect their subscribers from price increases. However, the attached *Sports Business Daily* excerpts from two panel discussions at the Sports Media & Technology Conference demonstrate that the goals cited by the cable companies are far different when speaking not to policy makers, but to Wall Street analysts or business people.

Several cable company executives appeared on the panels, including David Levy of Turner Sports (a Time Warner company), Jeff Shell of Comcast's Programming Group, and Melinda Witmer of Time Warner Cable's program acquisition arm. These executives' candid comments reveal that their treatment of independent sports networks is in reality motivated by other, less noble, factors, including:

- a desire to impair competitors to their owned channels;
- a desire to use leverage to obtain unrelated programming; and
- a search for an "anchor tenant" to help them sell profitable pay-extra sports tiers.

A comment by Time Warner Cable's Witmer revealed the company's thinking about sports fans: "We have people who are willing to paint their Winnebago in school colors and park themselves out there. I got to believe that they're willing to pay something extra." Comcast's home page (see attached screen shot) demonstrates the "anchor tenant" approach: Comcast uses the NFL Network to promote its expensive sports tier (more profitable for Comcast as a distributor) while keeping its owned sports channels on the basic tier (more profitable for Comcast's programming group).

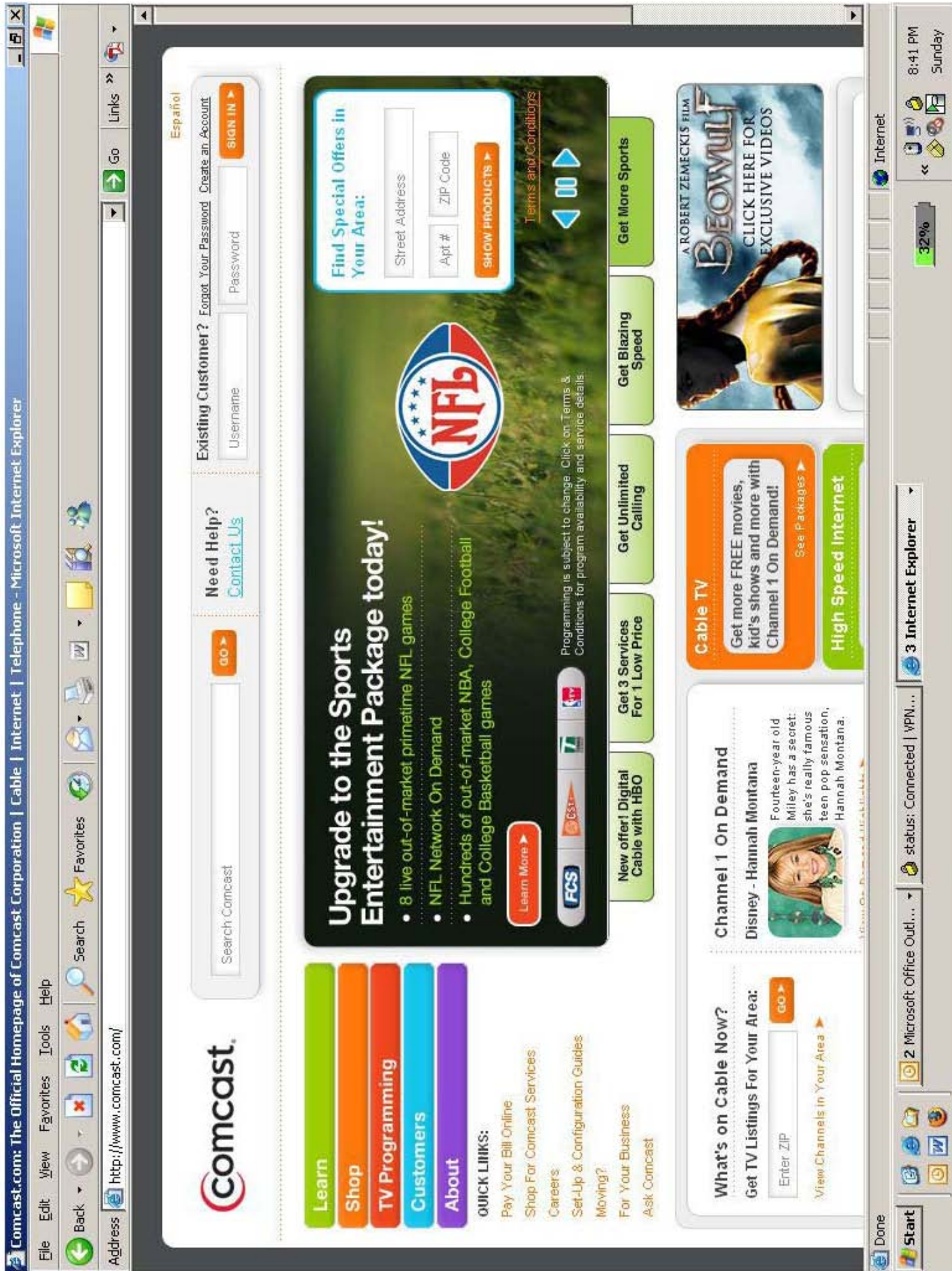
It is noteworthy that Time Warner Cable's treatment of independent programmers apparently changes when an independent programmer deepens its affiliation with the cable provider. The NBA's new production deal with Time Warner Cable, discussed in the attached article, is a good illustration. As reported in the attached, Time Warner companies will telecast NBA games on channels Time Warner owns and will also produce (for a fee) and share in the proceeds from NBA TV and NBA.com. The net result: NBA TV will receive broader carriage on Time Warner cable systems.

Respectfully submitted,


Gerard J. Waldron

Counsel to NFL Enterprises LLC

Attachments



Sports Media & Technology Conference Kicks Off In N.Y.

The Fantasy Sports Association Sports Media & Technology Conference began today at The Westin N.Y. with a panel entitled, "Understanding Tomorrow's Sports Media Consumer," featuring CSTV President & CEO Brian Bedol, Turner Sports President David Levy, Comcast Programming Group President Jeff Shell and NBA Deputy Commissioner & COO Adam Silver. Below are some highlights.

The Issue: Where is the industry on the issue of sports tiers currently?

The Skinny:

[...]

Bedol: "The distributors who have sports properties don't have the incentive to grow sports tiers because for the most part their own sports properties are distributed on a broader basis. As a business proposition, if everyone was focused on the same goal, which is maximizing the distribution of a tier, sports tiers can be viable business for distributors to offer. There needs to be a shared incentive to maximize distributions."

Levy: "If [sports nets] get larger distributions, they become competitors of TNT, ESPN and whoever. ... They become competitors for ratings, they become competitors for advertisers, they become competitors for distribution. I'm just saying, as they grow, they naturally become competitors."

[...]

The Issue: Has the NFL overplayed its hand in its effort to get carriage for NFL Network?

The Skinny:

Shell: "If Sunday Ticket was included as part of the basket of what was being offered, it certainly would be a better price."

[...]

The Issue: Will a viable competitor for ESPN emerge?

The Skinny:

Shell: "I think it's going to be very difficult. ... The brand and the passion of the fans -- it will be hard for anyone in this room to say they don't love 'SportsCenter.'"

Levy: "I disagree. We thought that with CNN and Fox News came along and woke up the sleeping giant. It can be done and will be done."

Bedol: "Just as Microsoft was invincible and then Google came along through the side door, right now it's asymmetric competition... and everyone in the collective (Versus, NBA TV and others) will have a real impact. For years, ESPN was the default because it had everything. Now that's not the case, its stature will continue to erode."

Silver: "It may come from consumers, that person who's more interested in a college lacrosse game online than a college football game on ESPN. I absolutely think viable competitors will emerge."

Sports Nets, Online Networking Among Highlights At SMT

The second day of the ninth annual Fantasy Sports Associations Sports Media & Technology conference kicked off today with a lively panel on programming and distribution of conference- and league-owned networks. The panel featured Big Ten Network President Mark Silverman, Fox National Cable Sports Network President Bob Thompson, Cox Communications Senior VP/Programming Bob Wilson and Time Warner Cable Senior VP & Chief Programming Officer Melinda Witmer. Here are some highlights:

The Issue: Why do sports tiers inspire such opposition from networks, like the Big Ten Network, and support from cable operators?

The skinny:

Witmer said sports tiers are “a way to control costs... Unfortunately, what we’ve not been able to do is find a strong anchor tenant. ... None of the networks are confident on a sports tier that consumers are going to go to it and find them. We believe diehard sports fans will pay for it, but we need to have the highest quality programming there to make it work.”

[...]

Greatest Hit: Witmer: “We have people who are willing to paint their Winnebago in school colors and park themselves out there. I got to believe that they’re willing to pay something extra.”

[...]



Time Warner Cable's
Melinda Witmer

SPORTS BUSINESS JOURNAL

NBA TV escaping sports tier

Network will add 7 Million homes on TWC

By JOHN OURAND & JOHN LOMBARDO

NBA TV is preparing to shift from Time Warner Cable's sports tier to a more widely available digital basic package, a move that stands in sharp contrast to the ongoing disputes operators are having with channels such as NFL Network and Big Ten Network.

NBA and Time Warner officials expect the move to be finalized later this month as part of a broader digital deal between the league and Time Warner.

A move from TWC's sports tier to digital basic would add about 7 million homes to NBA TV's distribution, pushing its total subscriber number to around 19 million, nearly a 60 percent jump.

As part of the deal, NBA TV will drop its license fee by as much as 40 percent, from 35 cents per subscriber per month to a fee somewhere in the mid-20s, according to cable industry sources. The NBA said it doesn't expect to lose money in the deal, since it would be collecting the lower license fee from more homes.

"We're presenting a different proposition [than the NFL Network]," said NBA Deputy Commissioner Adam Silver.

"We're presenting a less expensive channel for them, which we think is pro consumer in terms of the additional content that they're making available to their digital basic subscribers."

Despite NBA TV's move to digital basic, don't expect Time Warner, the country's second-largest operator with nearly 14 million subscribers, to move away from sports tiers. It will not budge from its demands that the NFL Network and the Big Ten Network accept carriage on such a tier and the MSO has long held that niche and/or expensive networks be placed on sports tiers.

Time Warner Cable considers the NFL Network and the Big Ten Network too niche and too expensive for a digital basic tier and just last month, Time Warner Cable signed a sports tier deal for NHL Network.

But by significantly dropping its license fee, NBA TV now meets Time Warner's price-value equation that justifies putting it on digital basic.

Time Warner Cable would not comment, since negotiations are ongoing.

The NBA has been negotiating only with Time Warner Cable, though it plans to begin negotiations with other operators once the Time Warner deal is completed. Some of the country's biggest operators also own NBA teams, such as Comcast (76ers) and Cablevision (Knicks). In addition, Portland Trail Blazers owner Paul Allen owns Charter Communications, the fourth-largest operator in the country.

The NBA launched NBA TV in November 1999, becoming the first professional sports league to launch its own network. The NFL and NHL have followed suit.

Earlier this year, Major League Baseball announced its planned launch of the MLB Network on the digital basic tiers of most cable operators, and Silver acknowledged that MLB's carriage, in part, caused the NBA to re-evaluate its strategy of accepting carriage on sports tiers.

Until now, NBA officials and cable operators felt the more pricey sports tier would attract enough subscribers to drive profits.

"We came to the same conclusion as [MLB], based on our own experience, that a sports tier was not ultimately the way to go because, I think, that the cable operators changed course and ultimately decided not to put the kind of marketing weight behind the sports tiers that they originally contemplated," Silver said.

As part of the new deal, the NBA will take back the 11 percent stake that Time Warner holds in NBA TV, and will own the channel outright. Time Warner's move to give up its stake, which sources said last year was valued at \$45 million, is a change from recent deals that have seen operators take equity stakes in sports networks, such as the MLB Network and The mtn. Time Warner gave up its stake for a piece of the digital profits that will come from NBA TV, NBA.com, broadband and mobile platforms.

"In our negotiation with Turner, equity was not a critical component of the deal for them," Silver said. "They were more interested in sharing in the profits from the network."

Earlier this summer, Time Warner-owned network TNT signed an eight-year deal to retain rights to the NBA's regular season and playoff games. Silver said he was hoping to finalize digital rights negotiations at the

same time, but the league was distracted by the Tim Donaghy gambling situation.

The move to digital basic is part of this larger deal, which would see Time Warner-owned Turner take over production of NBA TV and NBA.com. Production of individual team Web sites would remain at the NBA's Secaucus, N.J., facility.

"We either had to go in the direction of MLBAM and create a much larger dot-com infrastructure in order to compete or we had to partner," Silver said. "We made the decision that there was no scale in operating, in essence, a single Web site."

While this means relocating staff from Secaucus to Atlanta, staff reductions are uncertain at this time.

Turner becomes a marketing partner in the NBA's out-of-market package, League Pass, which means the NBA will use Turner executives to help develop the campaigns and Turner properties, such as TBS, CNN and Cartoon Network to market the package.